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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,101	01/20/2004	David R. Loveday	1999U026.RE.US	4294

7590 09/02/2004
Douglas W. Miller
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EXAMINER

CHEUNG, WILLIAM K

ART UNIT PAPER NUMBER

1713

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/761,101	LOVEDAY ET AL.	
	Examiner	Art Unit	
	William K Cheung	1713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12,15 and 17-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-12,15 and 17-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>0120</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 3-12, 15, 17-18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-68

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of copending Application No. 10/632,295. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are related to each other as genus and its species.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 1, 3-12, 15, 17-18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 6,300,439. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are related to each other as genus and its species.

4. Claims 1, 3-12, 15, 17-18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,271,323. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are related to each other as genus and its species.

Allowable Subject Matter

5. Claims 1, 3-12, 15, 17-18 would be allowable over the closest references of Canich et al. (WO97/48735), and Schrock et al. (US 5,889,128) if the ODP rejection set forth in instant office action is overcome.

The invention of claims 1, 3-12, 15, and 17-48 relate to a **process for polymerizing olefin(s) comprising, combining said olefin(s), a catalyst composition having a first catalyst component comprising a Group 15 containing bidentate or tridentate ligated Group 3 to 7 metal compound wherein the Group 3 to 7 metal atom is bound to at least one leaving group and to at least two Group 15 atoms, and wherein at least one of the at least two Group 15 atoms is bound to a group 15 or 16 atom through a bridging group; and a second catalyst component, wherein said second catalyst component is a metallocene compound and wherein said first catalyst component and said second catalyst component are added to a polymerization reactor in one of a slurry, a dispersion or a suspension.**

No prior art which anticipates or renders obvious has been located as of the date of the instant action. The closest prior art to Canich et al. disclose a polymerization

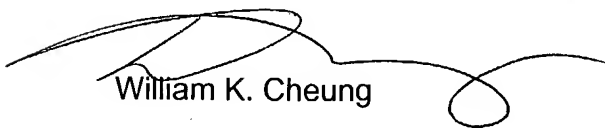
process using a Group 15 containing metal catalyst where the metal Nickel (page 53, claim 8, line 32) with a second catalyst. Canich disclose that second catalyst comprises a metallocene or a Ziegler-Natta catalyst (page 53, claim 1, line 7). However, the disclosure of Canich et al. is silent on that a Group 15 containing metal catalyst where the metal can be Group 3 to 7 metal. Therefore, Canich et al. do not suggest or teach a Group 15 containing metal catalyst where the metal can be a Group 3 to 7 metal. It would not have been obvious to one of ordinary skill in the art to modify the disclosure of Canich et al. to obtain the invention of claims 1, 3-12, 15, and 17-48. Schrock et al. disclose a process for polymerizing ethylene in the presence of a catalyst comprising a Group 15 containing bidentate or tridentate ligated metal (Ti, Zr or Hf) catalyst compounds (col. 6, line 18; line 45-65 to col. 7, line 1-11). However, Schrock et al. do not suggest to use the catalyst in a blend. Therefore, it would not have been obvious to one of ordinary skill in the art to combine the two references to obtain the invention of claims 1, 3-12, 15, and 17-48. Claims 1, 3-12, 15, and 17-48 are allowed.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William K Cheung whose telephone number is (571) 272-1097. The examiner can normally be reached on Monday-Friday 9:00AM to 2:00PM; 4:00PM to 8:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David WU can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William K. Cheung

Primary Patent Examiner

August 22, 2004

**WILLIAM K. CHEUNG
PRIMARY EXAMINER**